

37 Am. Jur. 2d Fraud and Deceit § 3

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

I. Overview

A. In General; Definitions and Types of Fraud

§ 3. Good and bad faith; relation to fraud

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1

Good faith is defined as “an honest intention to abstain from taking any unconscientious advantage of another, even though the forms and technicalities of law, together with an absence of all information or benefit of facts, would render the transaction unconscientious.”¹ Bad faith is, of course, the antithesis, and although it is an indefinite term, it differs from and is stronger than the idea of negligence in that it contemplates a state of mind affirmatively operating with a furtive design, with some motive of self-interest or ill will, or for an ulterior purpose.² There seems to be little difference between bad faith and fraud in this particular relation. Fraud may be said to be an action of a more affirmative evil nature, such as proceeding or acting dishonestly, intentionally, and deliberately, with a wicked motive, to cheat or deceive one party to a transaction with respect to the situation or operations, or such as an action that results to his or her damage or loss and to the advantage or gain of the other party.³ In some jurisdictions, bad faith has been held to be the test of fraud;⁴ thus, an honest mistake does not rise to the level of bad faith required to sustain a cause of action for fraud.⁵ However, in other jurisdictions, the view has been expressed that while under certain circumstances the word “fraud” is synonymous with “bad faith” the concepts of “bad faith” and “fraud” are generally separate and distinct, requiring the allegation and proof of different elements.⁶

Observation:

“Actual fraud” involves moral turpitude and does not include fraud implied in law, which may exist without the imputation of bad faith or an intentional wrong.⁷

Footnotes

- ¹ Warfield Natural Gas Co. v. Allen, 248 Ky. 646, 59 S.W.2d 534, 91 A.L.R. 890 (1933).
- ² Warfield Natural Gas Co. v. Allen, 248 Ky. 646, 59 S.W.2d 534, 91 A.L.R. 890 (1933).
- ³ Eckert v. Miller, 57 Ariz. 94, 111 P.2d 60 (1941); Warfield Natural Gas Co. v. Allen, 248 Ky. 646, 59 S.W.2d 534, 91 A.L.R. 890 (1933).
- ⁴ Gomillion v. Forsythe, 218 S.C. 211, 62 S.E.2d 297, 53 A.L.R.2d 169 (1950); Garcia v. Rutledge, 649 S.W.2d 307 (Tex. App. Amarillo 1982) ("fraud" is synonymous with bad-faith overreaching and dishonesty).
- ⁵ Masotti v. Bristol Sav. Bank, 43 Conn. Supp. 360, 653 A.2d 836 (Super. Ct. 1994), judgment aff'd, 232 Conn. 172, 653 A.2d 179 (1995).
- ⁶ Land Resources Development v. Kaiser Aetna, 100 Nev. 29, 676 P.2d 235 (1984).
- ⁷ In re Hanna, 197 B.R. 413 (Bankr. E.D. N.Y. 1996).
As to fraud implied in law, see §§ 8, 9.

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